IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2234 OF 2005

Chief Executive Officer,
Zilla Parishad, Kolhapur & Ors. ...Appellants

Versus

Yeshwant Nursery, Supe
(Through owner and proprietor
Shri.Balaso Baburao Lonkar) ...Respondent

.....

Mr.Pramod Kathane i/b Mr.Mandar Goswami
for Appellants.
None for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 15, 2006.

P.C.

1. Heard Counsel for the Appellants. In my opinion, this Appeal deserves to be dismissed summarily as no case for admission is made out, while confirming the finding reached by the lower Court that the Plaintiffs have failed to examine any agricultural officer of Taluka Panchayat

Samitee to establish the relevant fact about the defective supply made by the Respondent. Besides, no evidence has been produced to show that after the plantation of the supplied plants, inspite of proper care being taken by the Plaintiffs, the plants were damaged being defective.

2. What is relevant to note is that there is absolutely no evidence on record to even remotely suggest that immediately after supply was made by the Respondent, any grievance was made on behalf of the Appellants/Plaintiffs regarding the fact of defective supply. The Court below has rightly noted that even after two months from the supply of plants, the part payment was made to the Defendant by Block Development Officer and Agricultural Officer, without making any grievance about the defective supply. In other words, no complaint was registered with the Respondent/Defendant about quality or defective supply of plants for and on behalf of the Appellants/Plaintiffs.

3. Emphasis was placed on letter at Exhibit 56. That letter merely adverts to the provision in

the Act of 1990. The Court below has rightly noted that in none of these letters, it is mentioned that the Defendant was directed to supply the plants in separate bags, but he has not followed the said condition. If it is so, the Defendant cannot be blamed or fastened with the responsibility of having committed breach of supply of the order. In my opinion, the Court below has analysed the entire evidence in correct perspective to answer the issue of supply of defective and low quality plants of fruit plants by the Respondent. The Plaintiffs having failed to establish that issue, the question of awarding any compensation to the Plaintiffs as was claimed, does not arise.

4. In the circumstances, no fault can be found with the view taken by the Court below, in particular, for the reasons recorded in Paragraphs 13, 14 and 15 of the impugned Judgment. Suffice it to observe that there is no substance in this appeal. The same deserves to be dismissed.

5. Counsel for the Appellants relied on the argument which was advanced before the Trial Court

as referred in Para 12 of the impugned Judgment with reference to letters at Exhibits 55 and 56 issued by the Chief Executive Officer, Kolhapur. It was contended on behalf of the Plaintiffs that the Defendant was informed by these letters that he had deceived the Plaintiffs by supplying the plants of low quality at high cost. This submission, however, clearly overlooks the finding of fact recorded by the Court below. In the last sentence of the said paragraph, the Trial Court has categorically found that the letters referred to on behalf of the Plaintiffs make no mention of the fact that the Defendant had supplied the plants of low quality, contrary to the terms and conditions of the agreement. This finding recorded by the Court below is not at all challenged in the memo of appeal. Counsel for the Appellants was unable to point out any statement in the said letters to challenge the finding recorded by the Trial Court as referred to above. In the circumstances, even these letters will be of no avail to the Plaintiffs.

7. As no other argument is raised, there is

no substance in this Appeal. The same is devoid of merits. Dismissed.

A.M.KHANWILKAR, J.